



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
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WASHINGTON DC 20350-1000

SECNAVINST 5370.7E  
NAVINSGEN  
28 Feb 2020

SECNAV INSTRUCTION 5370.7E

From: Secretary of the Navy

Subj: MILITARY WHISTLEBLOWER PROTECTION

Ref: (a) 10 U.S.C. §1034, §1552 and §1553  
(b) DoD Directive 7050.06 of 17 April 2015  
(c) DoD Instruction 1020.03 of 8 February 2018  
(d) Uniform Code of Military Justice (UCMJ)  
(e) U.S. Navy Regulations 1990  
(f) SECNAVINST 5430.92C  
(g) SECNAVINST 5370.5C  
(h) Public Law 95-452  
(i) SECNAV M-5214.1  
(j) DoD Instruction 6490.04 of 4 March 2013  
(k) SECNAVINST 5720.42G  
(l) DoD OIG, Guide to Investigating Military Whistleblower Retaliation and Restriction Complaints of 18 April 2017  
(m) SECNAVINST 5800.12C  
(n) Public Law 113-66, Section 1709  
(o) ALNAV 030/14

Encl: (1) Definitions  
(2) Background  
(3) Responsibilities  
(4) Procedures

1. Purpose. This instruction establishes the Department of the Navy (DON) policies and assigned responsibilities for military whistleblower protection pursuant to references (a) and (o).

2. Cancellation. SECNAVINST 5370.7D.

3. Definitions. See enclosure (1).

4. Background. See enclosure (2).

5. Applicability

a. This instruction applies to the Offices of the Secretary of the Navy (SECNAV), the Chief of Naval Operations, the Commandant of the Marine Corps (CMC), and all U.S. Navy and U.S. Marine Corps installations, commands, activities and field offices; all other organizational entities within the DON; all personnel assigned to these entities, and DON Service Members who are serving outside of DON.

b. The protections in references (a) through (c), and this instruction apply to all Service Members, as defined in enclosure (1).

c. The restrictions in references (a) through (c), and this instruction apply to all Service Members and to all DON civilian personnel.

d. Paragraphs 6(c) through 6(e) of this instruction constitute regulatory orders that are applicable to all Service Members and DON civilian personnel. An intentional or reckless violation of these provisions by a person subject to reference (d) is punishable as a violation of Article 92 (Failure to obey order or regulation) or Article 132 (Retaliation) of reference (d). A violation by DON civilian personnel is punishable under regulations governing disciplinary or adverse action of civilian personnel.

## 6. Policy

a. Service Members are free to make a protected communication to: a Member of Congress; an Inspector General (IG); a member of a Department of Defense (DoD) audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; a court-martial proceeding; or any other person or organization designated pursuant to regulations or other established administrative procedures for such communications. Service Members are free to provide testimony or otherwise participate in or assist with an investigation or proceeding involving a protected communication. Navy regulations and instructions contain provisions that encourage or require DON personnel to report suspected impropriety, including criminal offenses.

b. DON personnel who report to proper authority those acts or omissions they reasonably believe to be violations of law or regulation, fraud, waste, abuse, or mismanagement, will remain free from reprisal and retaliation.

(1) Article 1137 of reference (e) requires DON Service Members to report all offenses of reference (d), which come under their observation, except when such members are themselves already criminally involved in such offenses at the time such offenses first come under their observation.

(2) In accordance with references (f), (g), and section 7 of reference (h), all DON personnel must report suspected violations of law or regulation, fraud, waste, or mismanagement to proper authority.

c. No person will restrict or attempt to restrict Service Members from making lawful communications to a member of Congress or an IG.

d. DON personnel will not take, or threaten to take, an unfavorable personnel action, or withhold, or threaten to withhold a favorable personnel action, as a reprisal against any Service Member for making or preparing, or being perceived as making or preparing, a protected communication.

e. DON personnel will not retaliate against a Service Member because the member reported a criminal offense.

7. Responsibilities. See enclosure (3). This instruction delegates to the Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN (M&RA)), the authority to act on behalf of SECNAV for the purposes of reference (a). The ASN (M&RA) may further delegate this authority to only the Principal Deputy ASN (M&RA). All references to SECNAV in this instruction refer to the official exercising this delegated authority.

## 8. Records Management

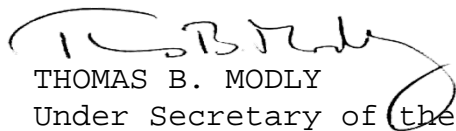
a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

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<https://portal.secnave.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

9. Information Management Control. The reporting requirements contained in paragraph 4, paragraph 6 of enclosure (2), paragraph 2 of enclosure (3), and paragraphs 4 and 7 of enclosure (4) are exempt from information collection control, per reference (i), Part IV, paragraph 7n.

  
THOMAS B. MODLY  
Under Secretary of the Navy

Distribution:

Electronic only, via Department of the Navy Issuances Web site  
<https://www.secnave.navy.mil/doni>.

## DEFINITIONS

1. Abuse of Authority. An arbitrary or capricious exercise of power by a Service Member, or a federal official, or employee that adversely affects the rights of any person or results in personal gain or advantage to himself or herself or to preferred other persons.

2. Appropriate Authority. To qualify for protection under references (a), (b), or this instruction, a protected communication must be made to:

- a. A member of Congress.
- b. An IG (as defined in this enclosure) or any other IG appointed under reference (h).
- c. A member of a DoD audit, inspection, investigation, or law enforcement organization.
- d. Any person or organization in the chain of command.
- e. A court-martial proceeding.
- f. Any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.
- g. Any person conducting an investigation or proceeding related to a protected communication.

3. Chain of Command. For the purposes of this instruction, includes not only the succession of Commanding Officers from a superior to a subordinate through which command is exercised, but also the succession of officers, enlisted members, or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

4. Criminal Offense. An act or omission punishable under reference (d), or other federal, state, or local criminal law.

5. DON Personnel. DON Service Members, as defined in paragraph 10, and DON civilian personnel.

6. Gross Mismanagement. A management action or inaction that creates a substantial risk of significant adverse impact on the agency's ability to accomplish its mission. The matter must be significant and more than de minimis wrongdoing or simple negligence. It does not include management decisions that are merely debatable among reasonable people.

7. Gross Waste of Funds. An expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.

8. IG: Include any of the following:

a. The IG of the DoD (DoD OIG); the IG of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a Service in the Navy; and any other IG appointed under Appendix 3 of reference (h).

b. The Military Department IGs, which consist of: the Army IG; the Naval IG (NAVINSGEN); the Air Force IG; and the Deputy Naval IG for Marine Corps Matters (DNIG/IGMC).

c. IGs within the Military Departments, which consist of any officer of the Armed Forces or employee of the DoD, other than a Military Department IG, who is assigned or detailed to serve as an IG at any level in one of the Military Departments.

d. DoD Component IGs, which consist of IGs assigned or detailed at any command level in one of the DoD Components other than the Military Departments.

9. Lawful Communication. Any communication containing information that a Service Member may release without violating any law, rule, or regulation. Whether a member has such authority may depend upon the position the member occupies.

10. Service Member. A Regular or Reserve Component officer (commissioned and warrant) or enlisted member of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a Service in the Navy) on active duty. A Reserve Component officer (commissioned and warrant) or enlisted member in any duty or training status, including officers and enlisted members of the National Guard. A midshipmen of the U.S. Naval Academy or any other midshipmen on active duty.

11. Member of Congress. A U.S. Senator or Representative; delegate or resident commissioner to the U.S. Congress; a staff member of a Senator, Representative, or congressional committee; or a delegate or resident Commissioner.

12. Personnel Action. Any action taken with respect to a Service Member that affects, or has the potential to affect, that member's current position or career. Such actions may include: a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under reference (j); and any other significant change in duties or responsibilities inconsistent with the Service Member's grade.

13. Protected Communication

a. A communication protected under references (a), (b), and this instruction is:

(1) A lawful communication by a Service Member to a member of Congress or an IG.

(2) A communication by a Service Member to a member of Congress; the IG; a member of a DoD audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; a court-martial proceeding; or any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications, in which the Service Member communicates information that he or she reasonably believes evidences:

(a) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of section 920, 920b, 920c, or 930 of reference (d), sexual harassment, or unlawful discrimination.

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) A threat by another Service Member or employee

of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to a Service Member or civilian or damage to military, Federal, or civilian property.

(3) Providing testimony, or otherwise participating or assisting in an investigation or proceeding related to a protected communication as defined in subparagraphs (1) and (2) above, or filing, causing to be filed, participating in, or otherwise assisting in an action brought under references (a), (b), or this instruction.

b. A protected communication will not be excluded from the protections provided in references (a), (b), or this instruction because:

(1) The communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph 13a of this enclosure.

(2) The communication revealed information that had previously been disclosed.

(3) Of the member's motive for making the communication.

(4) The communication was not made in writing.

(5) The communication was made while the member was off duty.

(6) The communication was made during the normal course of the member's duties.

14. Reprisal. The most severe form of retaliation. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for reporting or planning to report a criminal offense, or for making or planning to make a protected communication. Reference (a) also prohibits the following personnel actions: making or threatening to make a significant change in the duties or responsibilities of a Service Member not commensurate with the member's grade; the failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates; or



conducting a retaliatory investigation of a Service Member.

15. Restrict (Restriction). Preventing or attempting to prevent a Service Member from making, or preparing to make, a lawful communication to a member of Congress or an IG.

16. Retaliation. Retaliation encompasses any illegal, impermissible, or hostile actions taken by a Service Member's chain of command, peers, or coworkers with the intent to retaliate against that person for reporting or planning to report a criminal offense, or for making or planning to make a protected communication. Pursuant to references (a) through (d), (n) and (o), retaliatory behaviors include:

a. Reprisal, as defined in paragraph 14 of this enclosure.

b. Ostracism, which is the exclusion of a military member from social acceptance, or membership in, or association with a group of which such military member was a part or a reasonable person would conclude wanted to be a part, with the intent to inflict emotional distress on the military member, discourage reporting of a criminal offense, or otherwise discourage the due administration of justice. Ostracism requires a nexus to military service.

c. Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering. Maltreatment under this instruction does not require a senior-subordinate relationship as is required for maltreatment under reference (d).

17. Unlawful Communication. Any communication that contains information that a law, rule, or regulation would prohibit a Service Member from disclosing outside of DoD or to those within the DoD who do not have an official need for the information or the requisite security clearance to receive the information. Such communication includes, but is not limited to, information that: (1) is classified; (2) is a trade secret or commercial in

nature; (3) concerns a personal privacy interest; or (4) is exempt from release under reference (k). Reference (a), like most whistleblower protection statutes, provides a mechanism for Service Members to bypass these restrictions by reporting such information to specific individuals identified in reference (a).

18. Unlawful Discrimination. Pursuant to references (a) and (b), discrimination on the basis of race, color, religion, sex, or national origin.

## BACKGROUND

1. References (a) and (b) provide that no person may restrict a Service Member from making a lawful communication to a member of Congress or an IG. References (a) and (b) also prohibit retaliatory personnel actions against Service Members who:

a. Make "lawful" communications to Members of Congress or an IG.

b. Make, prepares to make, or are perceived as making or preparing, communications to an appropriate authority as defined in paragraph 1 of enclosure (1), provided the member reasonably believes the information disclosed, or to be disclosed, constitutes evidence pertaining to matters described in subsection (c)(2) of reference (a), or the definition of protected communication in paragraph 13 of enclosure (1). Such communications may be "lawful" or "unlawful" as defined in enclosure (1).

c. Provide testimony or otherwise participate in or assist with an investigation or proceeding involving a protected communication.

2. Reference (a) does not absolve Service Members from responsibility for their own wrongdoing, if any, associated with the information contained in the protected communication, but their cooperation may serve as a matter in mitigation. Nothing in this instruction will be construed as imposing a requirement for DON personnel to incriminate themselves.

3. References (a) and (b) give specific procedural rights to Service Members who allege restriction for preventing or attempting to prevent a member from making or preparing to make a lawful communication to a member of Congress or an IG, or reprisal for making a protected communication only if the member submits the complaint of reprisal to an IG, as defined in enclosure (1). Enclosure (3), paragraphs 1a and 4b, outline the responsibilities of the NAVINSGEN, DNIG/IGMC, Commanders, and Commanding Officers for notifying Service Members of their rights under reference (a).

4. Procedural rights afforded to the Service Member who made an allegation of restriction or reprisal under references (a) and (b) include:

a. Completion of the investigation within 180 days.

b. A notice to the Service Member from NAVINSGEN or DNIG/IGMC if the investigation has not been completed within 180 days of its commencement, and every 180 days thereafter, containing a description of the current progress of the investigation, and an estimate of the time remaining until completion of the investigation.

c. A final report on the results of the investigation provided to the Service Member, which will include:

(1) Provision of a redacted copy of the Report of Investigation (ROI) to the Service Member and, upon request, summaries of interviews and copies of documents acquired.

(2) Advice and assistance in filing a request for correction of the member's military record.

d. Provision of a copy of the ROI to the Board for Correction of Naval Records (BCNR) at the request of the Board, and IG assistance in gathering further evidence the Board may request.

e. Action by SECNAV upon receipt of a ROI that has been reviewed and approved by the DoD OIG.

f. Review by the Secretary of Defense (SECDEF) of a SECNAV action under subsection (h) of reference (a).

g. Review by the BCNR when requested by SECNAV or the Service Member.

5. Reference (a) protects both "lawful" and "unlawful" communications described in paragraph 1b of this enclosure. No Service Member who makes such a protected communication may be subject to an unfavorable personnel action because the communication contained information that a law, rule, or regulation prohibited them from disclosing outside of DoD or to those within DoD who did not have an official need for the

information or the requisite security clearance to receive the information. However, a Service Member making a protected communication that contains classified information is still responsible for complying with all other requirements applicable to the handling and transmission of classified information. If appropriately secure means of transmission are not readily available, the communication should indicate that the Service Member has additional information to provide at a higher classification level and request guidance for transmitting that information.

6. Responsibility to Base Communications upon Reasonable Belief

a. To receive the protection of references (a), (b), and this instruction, personnel who make communications described in paragraph 1b of this enclosure must reasonably believe the information they disclose constitutes evidence of the type of matter described in subsection (c)(2) of reference (a), or the definition of protected communication in paragraph 13 of enclosure (1) of this instruction.

b. Reference (1) provides that the motive for reporting the initial matter is not at issue in a restriction, retaliation, or reprisal investigation. It is irrelevant whether the complainant is motivated by a sense of duty or regulatory requirement, or reports the matter in retaliation against the chain of command or another official. The investigator should consider only the motives for taking or withholding a personnel action.

7. Time Limits to File (pursuant to reference (a))

a. Reprisal - one-year time limit to file.

(1) No investigation is required when a Service Member submits a reprisal complaint more than one year after the date that the member became aware of the personnel action that is the subject of the allegation.

(2) An IG receiving a reprisal complaint more than one year later may consider the complaint based on compelling reasons or circumstances. These circumstances may include situations in which the Service Member:

(a) Was actively misled regarding his or her rights.

(b) Was prevented in some extraordinary way from exercising his or her rights.

(c) Filed the same allegation within the one-year period with the wrong office or agency.

b. Restriction. There is no time limit on submitting a complaint of restriction.

c. Retaliation. There is no time limit on submitting a complaint of retaliation that does not allege reprisal.

### RESPONSIBILITIES

1. NAVINSGEN and DNIG/IGMC have overall responsibility for assisting SECNAV in ensuring full implementation of references (a), (b), and the part of reference (c) that prohibits retaliation in the form of an unfavorable personnel action for reporting, or preparing to report, a criminal offense. NAVINSGEN and DNIG/IGMC will:

a. Ensure that DON personnel who receive complaints of restriction, retaliation, or reprisal from Service Members advise them of their rights under references (a), (b), and this instruction.

b. For complaints of reprisal, determine whether a complaint has been made to a qualifying IG within one year of the Service Member becoming aware of the personnel action complained of and, if not, the investigator should consider whether the complaint filing should be accepted based on compelling reasons or circumstances. These circumstances may include those listed in paragraph 7(a)(2), enclosure (2).

c. Conduct a thorough review of the complaint. If no compelling reasons or circumstances exists, the investigator may submit a recommendation to dismiss the case as untimely to NAVINSGEN.

d. If the NAVINSGEN or DNIG/IGMC makes a preliminary determination in an investigation that, more likely than not, a personnel action prohibited by references (a), (b), and this instruction has occurred and the personnel action will result in an immediate hardship to the Service Member alleging the personnel action, the NAVINSGEN or DNIG/IGMC will notify the SECNAV for action that he or she deems appropriate. In cases where a Navy Echelon II IG is conducting the investigation, they will immediately notify NAVINSGEN so the SECNAV is informed.

e. Ensure the person conducting an investigation of restriction, retaliation, or reprisal under an DoD OIG, NAVINSGEN, or DNIG/IGMC tasking requirement is outside the immediate chain of command of both the member submitting the allegation and the person(s) alleged to have taken the retaliatory action.

f. Ensure the investigator operating under a DoD OIG, NAVINSGEN, or DNIG/IGMC tasking requirement submits a draft of the ROI to an attorney assigned to the Office of the General Counsel or a Navy or Marine Corps Judge Advocate, for an appropriate legal sufficiency review which will apply a preponderance of the evidence standard and validate compliance with applicable law, regulations, and policy.

g. Review and determine the adequacy of investigations tasked by DoD OIG, NAVINSGEN, or DNIG/IGMC, ensuring the investigation is conducted in accordance with references (a), (b), (k), and such other investigative guidance as NAVINSGEN or IGMC may provide.

h. For investigations not completed within 180 days of commencement (and every 180 days thereafter, as needed), NAVINSGEN or DNIG/IGMC will send a 180-day notice (as described in paragraph 4(b), enclosure (2) to:

(1) The Service Member alleging restriction or reprisal.

(2) The Under Secretary of Defense for Personnel and Readiness.

(3) SECNAV.

(4) A copy of the notice must be concurrently sent to the DoD OIG Whistleblower Reprisal Investigations (WRI) office.

i. Within 30 days of receiving notice that DoD OIG approved the ROI, transmit a copy of the ROI and the DoD OIG approval memorandum to SECNAV. A copy of the redacted ROI will be sent to the Service Member; and, if properly requested, summaries of interviews conducted and documents collected during the investigation may be provided to the Service Member in accordance with reference (k).

j. When NAVINSGEN, DNIG/IGMC, or other DON IGs receive allegations of social retaliation in the form of ostracism or maltreatment as prohibited by references (n), (o), and this instruction, refer them to the appropriate command for action, except in those circumstances where the IGs, in their discretion, determine the allegations should be handled by an IG. Such circumstances would exist, for example, when either



ostracism, maltreatment, or both is alleged to have occurred in addition to a retaliatory personnel action (i.e., reprisal) prohibited by reference (a), and the IG receiving the allegation determines it would be unreasonable to conduct two separate investigations, or, pursuant to reference (m), when a Flag Officer or member of the Senior Executive Service is alleged to have engaged in the ostracism or maltreatment.

k. Take such other action as may be necessary to implement the policy set forth in paragraph 6 of this instruction and the requirements of this enclosure, including approval of requests for time extensions for the conduct of investigations, provision of redacted copies of ROI, provision of advice and assistance to Service Members who seek correction of their naval records, and such additional investigative assistance as the SECNAV may direct or the BCNR may request.

2. On behalf of SECNAV, the ASN (M&RA) will:

a. Not later than 30 days after receiving from NAVINSGEN or DNIG/IGMC a ROI that has been approved by the DoD OIG, finding a sufficient basis to conclude that a personnel action prohibited by reference (a) or (b) has occurred, ASN (M&RA) will determine:

(1) Whether any corrective action planned or taken by Chief of Naval Personnel or Deputy Commandant M&RA is appropriate.

(2) Whether any administrative or disciplinary action planned or taken against the Service Member or civilian found to have taken a personnel action prohibited by reference (a) is appropriate.

(3) Order such other or additional corrective, administrative, or disciplinary action as he or she deems appropriate, which may include referring the report to the BCNR.

b. Upon determining that no corrective, administrative, or disciplinary action is appropriate, then, not later than 30 days after making such determination, provide SECNAV and the Service Member (regardless of current Active Duty status) a notice of the determination and the reasons for not taking action. When appropriate, refer the report to the BCNR for further review under subsection (g) of reference (a).

c. Report decisions about corrective, administrative, or disciplinary action to the NAVINSGEN or the DNIG/IGMC within 60 days of making the decision in order that they may report the results to the DoD IG.

d. Within 180 days after a Service Member or former Service Member submits to the BCNR an application for the correction of military records that alleges there was a personnel action prohibited by reference (a), issue a final decision on that application. The decision will order such action, consistent with the limitations contained in reference (a), as the ASN (M&RA), or the Principal Deputy ASN (M&RA) when designated, deems necessary to correct the record of a personnel action prohibited by reference (a). If the ASN (M&RA) fails to issue a final decision within that time, the Service Member or former Service Member shall be deemed to have exhausted his or her administrative remedies per reference (a).

3. The Judge Advocate General of the Navy and the Staff Judge Advocate to the CMC will ensure judge advocates are made available:

a. To assist and advise Service Members of their rights and responsibilities under reference (a) and this instruction, with emphasis on the procedures for making or preparing a communication that qualifies for protection under reference (a), and for filing complaints of reprisal or retaliation for making, or preparing to make, a protected communication.

b. To assist and advise Commanders and Commanding Officers in meeting their responsibilities under this instruction, with emphasis on the provision of training designed to ensure compliance with references (a), (b), (c), (l), and this instruction.

c. To advise investigators and conduct reviews for legal sufficiency, which will apply a preponderance of the evidence standard and validate compliance with references (a), (b), (c), and (k), in addition to other applicable law, regulations, and policy.

d. To represent the Service Member in a BCNR proceeding at the member's request when: (1) the investigation finds the prohibition of reprisal has been violated; (2) the Service Member is not represented by outside counsel; and (3) the Judge Advocate General of the Navy or Staff Judge Advocate to the CMC determines the member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case.

4. Commanders and Commanding Officers will:

a. Take specific action to publicize the contents of reference (a), (b), and this instruction. At a minimum, they shall publicize the prohibitions of paragraphs 6(c) through 6(e) of this instruction, the definitions contained in enclosure (1), and the procedures for filing a complaint of reprisal. They must also prominently display the rights and procedures, in command spaces accessible to all Service Members and DON personnel.

b. Ensure that Service Members assigned to their command who make an allegation(s) of restriction, retaliation, or reprisal prohibited under reference (a) are advised of their rights under references (a), (b), and this instruction; documents the provision of such advice; offer to forward the complaint of restriction or reprisal to DoD OIG, via NAVINSGEN (if the member is attached to a Navy activity) or DNIG/IGMC (if the member is attached to a Marine Corps activity); and forward the complaint to one of those organizations if requested by the Service Member.

c. Promptly investigate allegations of retaliation, not reprisal, in the form of ostracism or maltreatment prohibited by this instruction made directly to them or forwarded for action by NAVINSGEN or DNIG/IGMC. Refer the allegations to the next level in the chain of command for investigation when necessary to avoid the appearance of a lack of impartiality or objectivity of an investigation conducted under their direction. Upon conclusion of the investigation, take prompt corrective action and accountability action, as appropriate.

d. Notify the appropriate IG office if the investigation should apply the standards, investigative procedures, and

reporting requirements in either references (a) or (b). The investigation will be turned over to an IG investigator with the proper training.

e. Make personnel available to perform investigations and reviews for legal sufficiency.

f. Encourage trust in the chain of command and promote the policy underlying reference (a) by ensuring independent, fair, impartial, and timely investigation and resolution of complaints of restriction, reprisal, and retaliation.

g. Take such other action, including periodic training, as may be necessary, to meet the requirements of and implement the policy underlying references (a), (b), and this instruction.

## PROCEDURES

1. References (a) and (b) require the Secretaries of the Military Departments to ensure the Military Department IGs establish internal procedures for receiving, reporting, and investigating complaints of restriction or reprisal. This enclosure identifies those who may receive a complaint of restriction or reprisal, and specifies the procedures they must follow.
2. All complaints of reprisal submitted directly to the command will be forwarded to NAVINSGEN within three calendar days of receipt.
3. In accordance with reference (f), any officer of the Armed Forces or DoD employee who is assigned or detailed to serve as an IG or Command IG at any level in the DoD is authorized to receive complaints of reprisal from naval personnel for the purpose of satisfying the one-year filing deadline specified in references (a), (b), and enclosure (2), paragraph 7 of this instruction. When any DON IG office receives restriction or reprisal complaints from sources other than the WRI, it must notify NAVINSGEN or DNIG/IGMC of the complaint within seven working days of receipt of the complaint using current DoD OIG notification formats, and must include a copy of the original complaint and all supporting documentation in the notification. NAVINSGEN or DNIG/IGMC will endorse and forward the complaint and notification to the WRI within ten days of when the complaint was initially received.
4. Upon receipt of a complaint, NAVINSGEN and DNIG/IGMC will conduct all necessary inquiries or, at their discretion, assign the case to an Echelon II IG for action, as appropriate or required. Subordinate Echelon IGs will conduct complaint analysis and report initial findings to NAVINSGEN or DNIG/IGMC, as appropriate, to determine whether full investigation is warranted. If the Echelon II IG's recommendation is to investigate, a copy of the document initiating investigation must be submitted to the NAVINSGEN or DNIG/IGMC, using current DoD OIG notification formats, within 30 days of receipt of a restriction or reprisal allegation. If the recommendation is to dismiss for lack of sufficient evidence to warrant investigation, the Echelon II IGs must submit the recommendation with all supporting documentation to NAVINSGEN or IGMC for

review within 30 days of receipt of a restriction or reprisal allegation.

5. When assigning cases to subordinate Echelon IGs, NAVINSGEN and IGMC may consider factors such as: Chain of Command, location of subject, complainants and witnesses, travel costs, work load, operational factors, and conflicts of interest. However, NAVINSGEN and DNIG/IGMC tasking decisions regarding field-level investigations are final.

6. NAVINSGEN and DNIG/IGMC will establish qualification and certification requirements for investigators. Allegations of restriction or reprisal are often highly complex, fact-finding measures that require uniquely experienced and well-trained personnel be assigned to perform these statutory-based investigations. Investigators must be clearly versed in the tenets of military whistleblower restriction, reprisal, and retaliation and adhere to the guidance established by the DoD OIG and this instruction.

7. A notice to the complainant Service Member from NAVINSGEN or IGMC will be provided if the investigation has not been completed within 180 days of its commencement, and every 180 days thereafter, containing a description of the current progress of the investigation and an estimate of the time remaining until completion of the investigation. A final report on the results of the investigation will be provided to the Service Member.

8. Before an investigation may substantiate one or more allegations of restriction, reprisal or retaliation, the subject(s) will be afforded the opportunity to review and comment on the tentative conclusions of the investigation. The subject(s) will be notified in writing and given an opportunity to respond to the tentative conclusions within 14 working days of receiving the notification. The notice will include a copy of the draft ROI that has been redacted to remove personally identifying information or other sensitive information. This is the subject's opportunity to identify additional witnesses or further clarify previous testimony or evidence.

9. Subordinate Echelon IGs must forward final ROI to the NAVINSGEN or DNIG/IGMC, as appropriate, for review and submission to DoD OIG. Unless otherwise appropriate, these

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reports must not be forwarded via the investigating IG's chain of command. ROIs must be accompanied by a redacted copy of the report for the complainant, along with a written legal sufficiency review performed by a DON attorney in accordance with paragraph 1f of enclosure (3).

10. NAVINSGEN and DNIG/IGMC may return insufficient investigation reports for additional work at the field level when, in their opinion, these reports are incomplete or reach unsupported conclusions.